

Application No: 09/918,163
Attorney's Docket No: US 010342

Claims 1-4, 6, 8, 11-12, 15-16 and 20 were rejected under 35 U.S.C. § 103(a) as being allegedly obvious over US Patent 6,145,109 to Schuster et al., hereinafter noted "Schuster"; claims 5, 7 13 and 14 were rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Schuster in view of US Patent 6,289,003 to Raitola et al., hereinafter noted "Raitola"; claims 9, 17 and 18 were rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Schuster in view of US Patent 6,522,650 to Younge et al., hereinafter noted "Younge"; and claims 10 and 19 were rejected under 35 U.S.C. § 103(a) as being allegedly obvious over Schuster and Younge, and further in view of US Patent Application Publication No. 2005/0083878 to Zehavi, hereinafter noted "Zehavi." Applicant respectfully traverses these rejections.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143-§2143.03 for decisions pertinent to each of these criteria.

Applicant respectfully submits that Schuster does not disclose, teach or suggest all the subject matter recited in independent claims 1, 8, 15 or 20.

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Schuster shows a method of encoding a sequence of payload blocks that comprises deriving redundancy blocks from each sequential group of said payload blocks and combining each of said redundancy payload blocks with a payload block in a subsequent sequential payload group of said payload blocks. In the method described by Schuster replacement blocks are sent continuously, at the same time as a subsequent packet, even when said replacement blocks are not actually needed.

In contrast, claims 1, 8, 15 and 20 recite methods and an apparatus for recovering lost payload blocks, the methods comprising: determining whether at least one payload block within a particular packet is lost in a transmission; storing other payload blocks that are successfully received; subsequently transmitting a request for retransmission of said particular packet containing said lost payload block, as identified by the sequence identifier; and combining said stored payload blocks with said lost payload blocks of a retransmitted packet to form a complete packet. As correctly conceded by the Office Action, Schuster does not disclose the transmission of a request for retransmission of a particular packet containing a lost payload block, as identified by the sequence identifier. The Office Action relies upon the background art of Schuster with respect to this subject matter.

However, the background art of Schuster does not cure the admitted deficiencies of Schuster for two reasons. The first reason is that the methods described in the background section of Schuster only deal with the loss of entire packets and are completely silent about the problem of bad or lost blocks within a packet. See Schuster, Col. 1:60-67. The second reason is that there is no suggestion or motivation in Schuster itself or in the knowledge generally available to one of ordinary skill in the

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art, to modify Schuster's disclosure, teaching and suggestions or to combine Schuster's disclosure, teaching and suggestions with the methods described in the background art of Schuster. To the contrary, Schuster teaches away from expressly requesting the retransmission of any lost packets. Combining Schuster's invention with the disclosure, teaching and suggestions of Schuster's background art, as suggested by the Office Action, would change the principle of operation of Schuster, which is impermissible.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.). *See* MPEP, § 2143.01.VI.

Applicant therefore submits that the Examiner has failed to establish a *prima facie* case of obviousness because Schuster does not disclose, teach or suggest all the claim limitations, as recited

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in independent claim 1 and similarly recited in independent claims 8, 15 and 20. Furthermore, there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Accordingly, reconsideration and withdrawal of the rejection of claims 1, 8, 15 and 20 is respectfully requested.

Claims 2-7, 9-14, and 16 depend, respectively, from claims 1, 8 and 15, and are therefore also patentable over Schuster for at least the reasons stated above in connection with claims 1, 8 and 15, as well as for the separately patentable subject matter recited therein. Accordingly, reconsideration and withdrawal of the rejection of claims 2-7, 9-14, and 16 is also respectfully requested.

Regarding now claim 17, which was rejected over Schuster in view of Younge, this claim recites a system for enabling recovery of lost payload blocks in a packet switch network, the system comprising a processor that identifies erroneously received payload blocks within a particular decoded frame and storage means for storing other payload blocks that are successfully received. The system also comprises means for subsequently transmitting a request for retransmission of said particular frame, and means for combining said stored payload blocks with correctly received payload blocks of a retransmitted frame, which were previously erroneously received, to complete a frame. Applicant therefore submits that claim 17 is also patentable over the cited art references for at least reasons similar to the reasons stated above in connection with claim 1, as well as for the

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separately patentable subject matter recited therein. Accordingly, reconsideration and withdrawal of the rejection of claim 17 is also respectfully requested.

Claims 18 and 19 depend from claim 17 and are therefore also patentable over the cited art references for at least the reasons stated above in connection with claim 17, as well as for the separately patentable subject matter recited therein. Accordingly, reconsideration and withdrawal of the rejection of claims 18 and 19 is also respectfully requested.

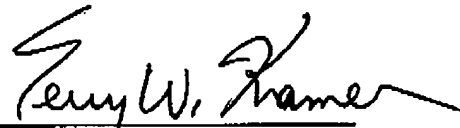
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CONCLUSION

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the correspondence attorney listed below in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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